

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



ORIGINAL

76-1600

United States Court of Appeals  
For the Second Circuit

UNITED STATES OF AMERICA,

*Appellee.*

B  
P/S

In the Matter

of

EDWARD DI SERO,

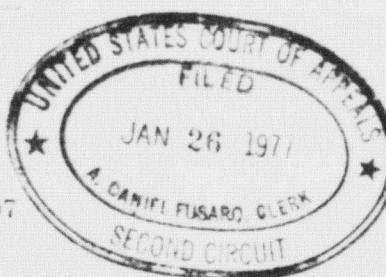
A Witness Called Before the October 1975 Grand Jury in the  
Southern District of New York,

*Appellant*

*On Appeal From The United States District  
Court For The Southern District Of  
New York*

APPELLANT'S APPENDIX

ARNOLD E. WALLACH  
Attorney for Appellant  
11 Park Place  
New York, N.Y. 10007



Dick Bailey Printers, 290 Richmond Ave., Staten Island, N.Y. 10302  
Tel. (212) 447-5358

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A1

RELEVANT DOCKET ENTRIES

Dec. 29-76 In the matter of EDWARD DI SERO--Filed notice of appeal of Edward Di Sero to the U.S. Court of Appeals for the Second Circuit from the order of 12-27-76 (Copy mailed to U.S. Attorney)

as to this man so that it is  
AZ  
ORDER DATED DEC. 13, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
IN RE EDWARD DI SERO,

A WITNESS BEFORE THE

GRAND JURY

On the application of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, filed in this matter on

And it appearing to the satisfaction of the Court:

1. That EDWARD DI FERO has been called to testify before the Grand Jury of the United States presently empaneled within this District; and
  2. That EDWARD DI FERO has refused to testify on the basis of his privilege against self incrimination; and
  3. That in the judgment of the said United States Attorney, the testimony from said EDWARD DI FERO may be necessary to the public interest; and
  4. The aforesaid application filed herein has been made with the approval of the Assistant Attorney General in charge of the Criminal Division of the Department of Justice, pursuant to the authority vested in him by Title 18, United States Code, Section 6003 and 28 C.F.R.O.
- 175.

NOW, THEREFORE, it is ordered pursuant to Title 18, United States Code, Section 6002 that the said EDWARD DI FERO give testimony which he refuses to give on the basis of his privilege against self incrimination as to all matters about which may be interrogated before said Grand Jury, and it is further ordered that no testimony or other information compelled hereunder, or any information directly or indirectly derived from such testimony or other information, may be used against the said EDWARD DI FERO in any case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this Order.

This Order shall become effective only if after the date of this Order the said EDWARD DI FERO refused to testify or provide other information on the basis of his privilege against self incrimination.

Dated: New York, New York  
Dec. 13, 1976

s/ Thomas P. Griesa  
UNITED STATES DISTRICT JUDGE

APPLICATION OF ROBERT B. FISKE, JR.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
IN RE EDWARD DI FERO,

A WITNESS BEFORE THE

APPLICATION

GRAND JURY

-----

ROBERT B. FISKE, JR., United States Attorney for  
the Southern District of New York, hereby makes  
application for an order pursuant to the provisions of  
Title 18, United States Code, Section 6001, et seq.,  
compelling EDWARD DI FERO to give testimony which he  
refused to give on the basis of his privilege against  
self incrimination, as to all matters about which he may  
be interrogated before the grand jury of the United  
States presently empaneled within this District, and  
respectfully alleges as follows:

1. The said EDWARD DI FERO has been called to  
testify or provide other information before said grand  
jury.
2. In the judgment of the undersigned, testimony  
from said witness may be necessary to the public interest.
3. The said witness has refused to testify on  
the basis of his privilege against self incrimination.
4. This application is made with the approval of  
Richard L. Thornburgh, Assistant Attorney General of the

Criminal Division, Department of Justice, pursuant to the authority vested in him by Title 18, United States Code, Section 6003 and 28 C.F.R. O. 175. A copy of this letter from said Assistant Attorney General expressing such approval is attached hereto.

s/ Robert B. Fiske, Jr.  
ROBERT B. FISKE, JR.  
United States Attorney for the  
Southern District of New York

Dated: New York, New York

LETTER DATED NOV. 23, 1976

DEPARTMENT OF JUSTICE  
Washington, 20530

NOV 23 1976

Honorable Robert B. Fiske, Jr.  
United States Attorney  
Southern District of New York  
New York, New York

Attention: Mr. Michael D. Abzug  
Special Attorney  
New York Strike Force

Re: Grand Jury Investigation

Dear Mr. Fiske:

Pursuant to the authority vested in me by 18 U.S.C. 6003(b) and 28 C.F.R. 0.175(a) I hereby approve your request for authority to apply to the United States District Court for the Southern District of New York for an order pursuant to 18 U.S.C. 6002-6003 requiring Edward Difero to give testimony or provide other information in the above matter and in any further proceedings resulting therefrom or ancillary thereto.

Sincerely,

s/ Richard L. Thornburgh

RICHARD L. THORNBURGH  
Assistant Attorney General  
Criminal Division

GEORGE L. NASH  
Notary Public, State of New York  
No. 52-4629527  
Qualified in Suffolk County  
Commission Expires March 30, 1978

s/ George L. Nash

AFFIDAVIT OF MICHAEL D. ABZUG SWORN TO DEC. 6, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
IN RE EDWARD DI FERO,

A WITNESS BEFORE THE

GRAND JURY

-----X  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

MICHAEL D. ABZUG, being duly sworn, deposes and  
says:

1. Affiant is an attorney in the Criminal Division  
of the United States Department of Justice.
2. This affidavit is submitted in support of the  
application for an order directing EDWARD DI FERO to  
answer questions before a grand jury.
3. That said EDWARD DI FERO has refused to testify  
before the said grand jury on the basis of his privilege  
against self incrimination.
4. This application for immunity is made with  
the approval of the Assistant Attorney General of the  
United States and the United States Attorney for the  
Southern District of New York.
5. This application for immunity is based on the  
belief that the information sought is necessary and  
material to the investigation now being conducted by

the said grand jury with respect to violations of  
Sections 371 and 1955 of Title 18, United States Code.

6. This application for immunity is made in good  
faith.

s/ Michael D. Abzug  
MICHAEL D. ABZUG  
Special Attorney  
U.S. Department of Justice

Subscribed and sworn to before  
me this 6th day of December, 1976

GEORGE L. NASH  
Notary Public, State of New York  
No. 52-4629527  
Qualified in Suffolk County  
Commission Expires March 30, 1978

s/ George L. Nash

MINUTES OF HEARING HELD DEC. 27, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
:  
IN RE: EDWARD DI SERO, a witness :  
before the Grand Jury :  
----- x

United States Courthouse  
Foley Square  
New York, New York

December 27, 1976  
3:05 o'clock, p.m.

BEFORE: HON. THOMAS P. GRIESA,

STEVEN KLEIN  
Court Reporter

NATIONAL REPORTING INC.  
CERTIFIED SHORTHAND REPORTERS  
FIVE WORLD TRADE CENTER  
NEW YORK, N. Y. 10048  
[212] 466-1280

## 2 APP E A R A N C E S:

3 MICHAEL D. ABZUG, ESQ.,  
4 Special Attorney, United States Department of Justice:  
5 One St. Andrews Plaza  
6 New York, New York

7 ARNOLD E. WALLACH, ESQ.,  
8 Attorney for Edward Di Sero  
9 11 Park Place  
10 New York, New York

11 \* \* \*

12 THE COURT: Proceed.

13 MR. ABZUG: Your Honor, first I would like to  
14 introduce Mr. Wallach. He represents a witness who  
15 is presently before the Grand Jury by the name of  
16 Edward Di Sero. He is present in the courtroom  
17 behind me.

18 MR. WALLACH: I would like to hand this up to  
19 save time.

20 Mr. Di Sero has a leg ailment, may he remain  
21 seated?

22 THE COURT: Yes.

23 MR. ABZUG: I also brought with me the court  
24 reporter, Mr. Klein, who is in front of you, and our  
25 Grand Jury Forelady, Mrs. Tomasina Amarino.

Very briefly, Your Honor, this involves a  
motion by the government to remand Mr. Di Sero to

2 the custody of the United States Marshal pursuant  
3 to Title 18, United States Code Section 1826(a).

4 THE COURT: Can I see the section, do we have  
5 a copy of it?

6 Do you have a copy of the section here?

7 MR. ABZUG: No, I don't, Your Honor.

8 Mr. Di Sero was subpoenaed before the Grand  
9 Jury and appeared before the Grand Jury on December  
10 13, 1976. At that time he was advised of the nature  
11 and scope of this Grand Jury investigation which  
12 was an investigation into alleged violations of  
13 syndicated gambling.

14 He was advised of his right to counsel and  
15 he was asked certain questions pertaining to that  
16 investigation. He refused to answer on the basis  
17 of his privilege against self-incrimination and  
18 was shown an order which Your Honor signed on  
19 December 13, 1976, which granted him testimonial  
20 immunity pursuant to Title 18, United States Code  
21 6002.

22 THE COURT: May I see the order?

23 MR. ABZUG: Yes.

24 May I approach the bench?

25 THE COURT: Yes.

2 Proceed.

3 MR. ABZUG: The order was explained to Mr.  
4 Di Sero, and Mr. Di Sero indicated that he wanted  
5 more time to, or time to retain counsel.

6 Accordingly, the Grand Jury proceeding was  
7 adjourned until today's date, December 27, 1976.

8 Mr. Di Sero has retained competent counsel,  
9 Mr. Wallach. Mr. Wallach has had an opportunity  
10 to file a brief in this matter. Mr. Di Sero appeared  
11 once again before the Grand Jury and again was asked  
12 questions pertaining to the Grand Jury investigation,  
13 and again refused to give testimony on the basis of  
14 his privilege against self-incrimination notwithstanding  
15 Your Honor's order signed on December 13th.

16 Your Honor, the law is clear, he has no right  
17 to refuse to testify in light of Your Honor's order  
18 and the government contends that he should be  
19 immediately remanded into the custody of the United  
20 States Marshal pursuant to Title 28, United States  
21 Code Section 1826(a). I contacted a marshal and  
22 there is a marshal waiting outside now.

23 If I may add one more statement?

24 THE COURT: Yes.

25 MR. ABZUG: If Your Honor wishes, I would be

1 happy to draft up a proposed order should Your Honor  
2 decide that you wish to remand him into the custody  
3 of the marshal pursuant to that section.

4  
5 THE COURT: Mr. Wallach?

6 MR. WALLACH: If it please Your Honor, this  
7 man came today, the United States Attorney did give  
8 me an extension of time in order to discuss these  
9 issues with this gentleman at my office, and I did  
10 so. I then prepared a set of papers, one is a  
11 statement before the Grand Jury, badly typed of  
12 course, but quite composite, which gave his reasons.  
13 That statement was not based on whim, a purely  
14 subjectiveness whim on my part, it was based on a  
15 number of cases which are before Your Honor, I think,  
16 in a brief, the latest one being decided a few  
17 months ago, Hinton which refers to two other cases  
18 from this circuit, Kurzer and Bianco.

19 In the brief that I delivered to Your Honor  
20 I think that on the basis of rulings in this circuit  
21 we are entitled to have the United States attorney  
22 certify to this Court all the matters referred to  
23 in my client's statement which was before the Grand  
24 Jury.

25 However, there was one thing I omitted,

1  
2 Your Honor, and I would ask your indulgence and  
3 consideration --

4 THE COURT: I don't see where you cite those  
5 cases here.

6 MR. WALLACH: In the brief before Your Honor,  
7 the last case is United States against Hinton.  
8 That cites Kurzer and Bianco.

9 THE COURT: Can you just tell me what the  
10 argument is? Listing a bunch of cases doesn't help  
11 me. I don't have the cases.

12 MR. WALLACH: I will be glad to tell it to  
13 you, Your Honor.

14 A number of years ago this Court in United  
15 States against Catalano and Dellacroce (phonetics),  
16 it developed that they were indicted for a con-  
17 spiracy. It developed that the prosecutor --

18 THE COURT: 6002 is a statute passed in 1970.  
19 Now, is there any statute saying that 6002 is un-  
20 constitutional, any case saying it is unconstitutional,  
21 or the immunity therein is an improper immunity  
22 which is not broad enough to require the witness to  
23 testify?

24 MR. WALLACH: No, sir, I cite the case in my  
25 brief and precisely because of the Kastigar case,

1

A15

7

2

this man has asked the United States attorney to certify to this Court, based on the Kastigar case, that if he is ever indicted for what he may say, he will be in a position to know whether any leads or such subtleties as may come from his testimony is being used as a basis for a prosecution against him.

3

THE COURT: In other words, you would say that the immunity grant is complete and your client would be required to testify if the United States Attorney made this kind of a certification?

4

MR. WALLACH: Yes.

5

THE COURT: What is the certification you want made?

6

MR. WALLACH: Should I read it to Your Honor? I have it here.

7

THE COURT: Yes.

8

MR. WALLACH: That in the event --

9

THE COURT: Where are you reading from?

10

MR. WALLACH: From page 1, it is a quite complete statement, page 1 and page 2 states that they certify to Your Honor that the authorities, whether in this jurisdiction, whether in a different agency of the federal government, whether the State of New York or any other state has any information

1 as to this man so that if he were indicted or  
2 charged with a crime in the extra jurisdictions,  
3 he would know then that it is not based on any  
4 testimony given before this Grand Jury.

5  
6 THE COURT: What is the certification that  
7 you want made? What is the United States attorney  
8 supposed to say?

9  
10 MR. WALLACH: He is supposed to tell this  
11 Court either that the authorities have no informa-  
12 tion, he is not a suspect, he is not being investi-  
13 gated, or if he is, show the evidence to this Court  
14 so that we will know whether any leads have been  
utilized from his compelled testimony.

15 I will read the whole statement to Your Honor  
16 if you wish it.

17 THE COURT: I don't want you to.

18 MR. WALLACH: That is the substance of it,  
19 Your Honor.

20 THE COURT: You have given me something. Is  
21 this something that Mr. Di Sero read to the Grand  
22 Jury?

23 MR. WALLACH: It is before the Grand Jury.

24 MR. ABZUG: The statement was marked in  
25 evidence as Grand Jury Exhibit 1, and then I read

2 the statement to the Grand Jury. He adopted the  
3 statement.

THE COURT: Let me just read it.

5 Okay, the request is as follows: "That the  
6 authorities conducting this investigation certify  
7 to a Court of competent jurisdiction in writing,  
8 all evidence in their possession that they claim is  
9 independent of all testimony and evidence that may  
10 be compelled from me, and otherwise involved in any  
11 answer or answers or responses I am compelled to  
12 give to the question or questions that is or are or  
13 will be put to me and further relying upon the ad-  
14 vice of counsel, I request that the United States  
15 attorney conducting this investigation notify all  
16 other jurisdictions both federal and state as to  
17 whether any prosecution by them of the witness is  
18 contemplated."

19 I guess that is the extent of the request.

22 MR. ABZUG: May I briefly respond?

THE COURT: Yes.

22 MR. ABZUG: Your Honor, that request is totally  
23 unfounded. What essentially he is asking is pre-  
24 mature, quite frankly. The only complaint that Mr.  
25 Di Sero would have under 6002 is that if the

1 government used his testimony in a subsequent  
2 criminal prosecution, or the State did that, and  
3 we haven't reached that point. He is asking us to  
4 make a --

5 THE COURT: I will not require any such  
6 certificate. If and when a prosecution is brought  
7 against this witness, then there can be some  
8 relevant inquiry as to whether there has been a  
9 violation of the conditions of the immunity.  
10

11 I will overrule that objection to his testimony.  
12 What about the electronic surveillance?

13 MR. WALLACH: Excuse me, Your Honor, just for  
14 the record?

15 THE COURT: All right.

16 MR. WALLACH: Since there is going to be an  
17 appeal here, I am also saying that the Kastigar  
18 case -- I am sorry, I withdraw that.

19 I am claiming that under the Kastigar case  
20 I am not being given the full immunity and I still  
21 maintain that the Councilman case against Hitchcock,  
22 I think, is still the law, and that the immunity is  
23 not coextensive with the Fifth Amendment, notwithstanding  
24 the Kastigar case. It is against me, I  
25 know that. There will be an appeal here and I have

1 to do this for the record.

3 THE COURT: Now, what about the electronic  
4 surveillance?

5 MR. ABZUG: With respect to the electronic  
6 surveillance, I note for the record that the first  
7 time that such a request was brought to the attention  
8 of the government was about five minutes before the  
9 proceeding commenced today. Nevertheless, the  
10 government is prepared to make the following  
11 representation, which I think is consistent with  
12 the law in this circuit, and more specifically,  
13 a recent case in re: Millow at 529 Fed. 2nd. 770,  
14 a recent case decided by this Court in 1976.

15 In any event, the government is prepared to  
16 make the following representation. This is based  
17 upon my knowledge of the investigation, I have been  
18 the only special attorney assigned to this investiga-  
19 tion, as well as a conversation I had today with  
20 Mr. Barry Bray, that is B-r-a-y, who is a special  
21 agent of the Federal Bureau of Investigation and is  
22 the case agent assigned to this investigation.

23 On the basis of our collective knowledge, we  
24 are prepared to make the following representation:  
25 that we are personally unaware of the results of any

1 electronic or mechanical surveillance which one,  
2 was directed against Mr. Edward Di Sero; two,  
3 resulted in the interception of any conversation  
4 in which Edward Di Sero participated; or three, was  
5 conducted in premises which the witness owned,  
6 leased, licensed or otherwise had a proprietary  
7 interest, and specifically the premises located  
8 at 2411 Prospect Avenue, Bronx, New York.

9  
10 I believe under the statute, Your Honor, that  
11 that response is quite sufficient.

12 THE COURT: You said you are unaware of any  
13 results. Was the word "results" put in there  
14 designedly rather than you are unaware of any  
15 surveillance?

16 Are you aware of anything that has come from  
17 any such surveillance?

18 MR. ABZUG: We are unaware of it, yes.

19 THE COURT: But are you aware that there was  
20 any such surveillance?

21 MR. ABZUG: No, there was no surveillance that  
22 was successful. We are unaware of any surveillance  
23 that was either successful, that produced results,  
24 or unsuccessful, that is a surveillance that produced  
25 no results.

2 THE COURT: All right.

3 Mr. Wallach?

4 MR. WALLACH: I challenge the statement, of  
5 course, because there are a number of conditions.  
6 Firstly, notwithstanding the Millow case, I am asking  
7 for an all-agency search. Just one agency, the  
8 gentleman he referred to was an agent of the FBI,  
9 I would submit that there is more than --

10 THE COURT: Do you have any information in-  
11 dicating --

12 MR. WALLACH: No.

13 THE COURT: I will order the -- does the  
14 witness refuse to testify?

15 MR. WALLACH: I believe so, Your Honor, he  
16 stands by the statement.

17 THE COURT: I think the witness should come  
18 up.

19 MR. WALLACH: Can he sit down, sir, there is  
20 a problem with his foot?

21 THE COURT: Yes.

22 Is it Di Sero or Di Fero?

23 MR. WALLACH: Di Sero.

24 THE COURT: I think still I am not quite  
25 clear on what the question or questions were that

2 he refused to answer.

3 MR. ABZUG: Specifically there were two  
4 questions that were posed to the witness, I can  
5 have the court reporter read them back, but my re-  
6 collection was that they were as follows: "Do you  
7 know an individual by the name of Michael DeRienzo?"  
8 He refused to answer that question; and "Do you know  
9 an individual by the name of Vincent Ciardello,"  
10 and he refused to answer that question.

11 Then I asked him whether, if the Grand Jury  
12 continued to ask questions pertaining to his rela-  
13 tionship with Mr. Michael DeRienzo and Mr. Vincent  
14 Ciardello, would he refuse to answer, and he  
15 indicated that he would.

16 THE COURT: I want to make it clear to you,  
17 Mr. Di Sero, that I am ruling that you are legally  
18 obligated to answer those questions and you have  
19 no legal excuse to refuse to answer them. Do you  
20 understand that?

21 MR. DI SERO: Yes.

22 THE COURT: Do you still refuse to answer  
23 those questions?

24 MR. DI SERO: On advice of counsel, yes, I  
25 refuse to.

2 THE COURT: Well, I am telling you as the  
3 Court that if the advice of counsel is that you  
4 don't need to answer those questions, the advice of  
5 counsel is wrong and you are legally obligated, do  
6 you understand that?

7 MR. DI SERO: Yes.

8 THE COURT: Yes you understand that?

9 MR. DI SERO: Yes.

10 THE COURT: And you still refuse to answer  
11 any of those questions?

12 MR. DI SERO: Yes, Your Honor.

13 MR. WALLACH: May I be heard a second?

14 THE COURT: Yes.

15 MR. WALLACH: Your Honor, just to save time  
16 in anticipation of your ruling, would Your Honor  
17 stay an order so that I can appeal?

18 THE COURT: No.

19 MR. WALLACH: Would you give him a few days  
20 to surrender?

31 THE COURT: No.

22 There has been a delay in the Grand Jury pro-  
23 ceedings, there have been adjournments and he came  
24 in today and he should have answered those questions  
25 and he is in contempt of course in refusing to

2 answer.

3 I will direct that he be placed in the custody  
4 of the United States Marshal for confinement. I  
5 am making that direction pursuant to 28, United  
6 States Code Section 1826.

7 He will be confined until he is willing to  
8 give the testimony and answer the questions legally  
9 required as I have directed.

10 The period of his confinement shall not exceed  
11 the term of the Grand Jury, including any extensions,  
12 but in no event shall he be confined more than 18  
13 months.

14 I wish to make it clear that he has the right  
15 to purge himself of this contempt by obeying the  
16 order of the Court and answering the questions.

17 At any time when he is willing to answer the  
18 questions, he will be released from confinement and  
19 he can purge himself of contempt.

20 This proceeding is a civil contempt proceeding  
21 and its sole purpose is to compel obedience to the  
22 court order and he can release himself by obeying  
23 the Court's order.

24 I think he should be aware that if he continues  
25 in his refusal to obey the order of the Court, he

1 may be subjecting himself to criminal contempt,  
2 penalties which will be over and above what I have  
3 stated here, and over and above what I am imposing  
4 here.

5 In other words, if the term of this Grand Jury  
6 should expire and he has not purged himself of  
7 contempt and he still remains in contempt, there  
8 may be a criminal penalty over and above this civil  
9 contempt.

10 Is the marshal here?

11 MR. WALLACH: May I make one more request?

12 THE COURT: What is that?

13 MR. WALLACH: Your Honor, this man has been  
14 getting medical attention, he is not fainting, it  
15 is not a fatal illness, he has an arthritic condition,  
16 he suffers from the effects of uric acid. Would  
17 Your Honor commit him to an institution where he will  
18 be treated?

19 He is on a special diet, special medication,  
20 he is not fainting, Your Honor.

21 THE COURT: I am not saying he is fainting,  
22 but he does not need to be in any institution right  
23 now, he is simply disobeying the law, it is a willful  
24 disobedience to the law, there is no valid reason

1 whatsoever shown. They have medical facilities at  
2 the Metropolitan Correctional Center and they will  
3 accord him the benefit of any such medical facilities.

4  
5 He is committed and let us get the marshal in.

6 MR. WALLACH: Very well, Your Honor.

7  
8 \* \* \*

9  
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25

## STATEMENT OF EDWARD DI SERO

I, EDWARD DI SERO, appearing before this grand jury, pursuant to subpoena and relying upon the advice of counsel Arnold E. Wallach, whose office is at 11 Park Place in the Borough of Manhattan, City and State of New York, and without prejudice to my rights under the 4th and 5th Amendments to the Federal Constitution (privilege against self-incrimination and right to privacy) and without any intent to obstruct the proceedings of this grand jury, refuse to respond to any questions propounded to me on the basis of the privilege against self-incrimination as provided for in the 5th Amendment to the Federal Constitution, as well as my right to due process of law, for the reason that any response or responses that I may give, may be the basis for a prosecution and conviction, penalties and forfeitures, and all the consequences falling therefrom, in this jurisdiction or any other jurisdiction both federal and state, because the authorities in such jurisdiction or jurisdictions may claim that the answers, testimony, responses and/or evidence I give, all under compulsion, were not the basis for any such prosecution and all consequences resulting from such prosecution, including but not limited to a resulting conviction, penalty, forfeiture or liability, and that such prosecution and its consequences as aforesaid, are or would be untainted by my compelled testimony or from any leads therefrom. I respectfully bring to the attention of this grand jury that I have already been charged with certain crimes in the State of New York and that those charges were dismissed before trial. Hence, I am apprehensive that my compelled testimony may be

the basis for leads and consequences thereof, that would be utilized by the New York State authorities to further prosecute me. I furthermore, upon the advice of counsel, respectfully bring to the attention of this grand jury that any order granting me immunity may not extend to any proceeding or proceedings brought against me in the State of New York or in some other jurisdiction. The charges that heretofore were pending against me involved the same subject matter, I believe, as comprises the subject matter of this grand jury investigation. It is respectfully requested that the authorities conducting this investigation certify to a court of competent jurisdiction in writing, all evidence in their possession that they claim is independent of all testimony and evidence that may be compelled from me, and otherwise involved in any answer or answers or responses I am compelled to give to the question or questions that is or are or will be put to me and further relying upon the advice of counsel I request that the United States Attorney conducting this investigation notify all other jurisdictions both federal and state as to whether any prosecution by them of the undersigned is contemplated and to further show my good faith in suggesting this, it is verily believed that the United States Attorney can request this information from the National Crime Information Center or the Federal Bureau of Investigation for any information as to me, and in so doing inform them of the grant of what purports to be "immunity" as to the undersigned. Any such information would thus enable the authorities in such other jurisdictions to certify in writing with the Courts of those jurisdictions which can grant immunity,

any evidence that exists as to me thus enabling me or counsel to know that if I am ever prosecuted in such other jurisdiction or other jurisdictions, such prosecution is or will not be based on the compelled testimony and evidence which the United States Attorney seeks to elicit from me.

Relying further upon the advice of counsel, I respectfully put that I properly may not be before this grand jury, in that upon information and belief I may have been subjected to electronic surveillance and/or wire tapping in violation of my rights under the 4th and 5th Amendments to the Federal Constitution, and 18 U.S.C. Sections 2515, 2518(10) (a) and 2510 (11) of Title 18 thereof. And that the proceedings herein and the questions asked or to be asked, may be the fruits of such illegal electronic surveillance including but not limited to wire tapping. Consequently, the undersigned in making this demand for the aforementioned disclosures wishes to include therefor any electronic or other surveillance undertaken not only by the United States, its agents and employees, but any governmental agency, state, federal or local and by any private person or corporations, and any and all disclosure and production of voice records, tapes, mechanical and electrical recordings, logs, memoranda, records, letters or airtels of the same, including the date and place of the surveillance, who was present at those place or places, who conducted such surveillance, the duration thereof, and the manner in which it was conducted, as well as any and all applications, affidavits, memoranda, and other papers submitted in support of applications for executive, administrative or judicial approval for such surveillance hereinabove described and all administrative

judicial and executive orders, opinions and decisions responsive thereto, or relating to the surveillance hereinabove described. Further, I respectfully request that the United States Attorney disclose whether in ascertaining the occurrence or occurrences of such electronic surveillance, the United States Attorney made a "all agency" search therefor. The undersigned further respectfully requests in regard to the aforesaid, any and all disclosure as to whether there was any electronic surveillance at any premises that I have an interest in, occupy, own or use, and whether the conversations and voices of my attorney, attorneys, or persons in their employ were overheard in regard to such electronic surveillance.

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EDWARD DI SERA

**NOTICE OF APPEAL**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of

EDWARD DI SERO,

A Witness Called Before the October  
1975 Grand Jury in the Southern  
District of New York,

-----  
Appellant

Notice is hereby given that EDWARD DI SERO hereby appeals  
to the United States Court of Appeals for the Second Circuit,  
from the final judgment or final order made and granted by the  
Honorable Thomas P. Griesa, a Judge thereof, on December 27,  
1976, to serve a term in the Metropolitan Correction Center for  
either 18 months, or until the term of the October 1975 Grand  
Jury, Southern District of New York, expires, whichever occurs,  
for civil contempt under 28 U.S.C. 1826 and the said EDWARD  
DI SERO appeals from each and every part of said final judgment  
or final order.

Dated: New York, New York  
December 29, 1976

Yours, etc.

ARNOLD E. WALLACH  
Attorney for EDWARD DI SERO  
Office & P. O. Address  
11 Park Place  
New York, N. Y. 10007

WALLACH

AFFIDAVIT OF PERSONAL SERVICE

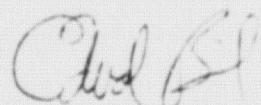
STATE OF NEW YORK  
COUNTY OF RICHMOND ss.

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 26 day of Jan. 19 77 at No. 1 St. Andrews Plaza, NYC

deponent served the within *Appendix*  
upon U.S. Atty., So. Dist. of NY

the Appellee herein, by delivering 1 true  
copy(ies) thereof to him personally. Deponent knew the person so  
served to be the person mentioned and described in said papers as the  
Appellee therein.

Sworn to before me this  
26 day of Jan. 1977



Edward Bailey

*W. Bailey*  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1978